IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11604 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANISHBHAI J RAIZADA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11604 of 2003

MR PARITOSH CALLA for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED for Respondent No. 1-3

MR JB PARDIWALA for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 10/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner has challenged the action of the respondents in not considering the case of the petitioner for grant of compassionate appointment. The short facts leading to the present petition are that the petitioner's elder brother one Shri Kirankumar J. Raizada was employed in the Labour Court, Bhavnagar as Clerk-cum-Typist. The said Shri Kirankumar J. Raizada expired while in service

on 27.3.1997. The petitioner claiming to be dependent on said Shri Kirankumar Raizada, applied on 19.4.1997 for being granted compassionate appointment. It is the case of the petitioner that the respondents asked the petitioner to apply in proper form, which he did on 27.5.1997. The petitioner has further alleged that despite repeated reminders, the respondents did not dispose of the application of the petitioner for compassionate appointment. Finally by order dated 19.12.2000, the petitioner was communicated that his application is rejected on the ground that brother is not entitled to receive compassionate appointment. The petitioner however, pursued the matter with the respondents through further representations and once again by order dated 30th October, 2002, the petitioner's request for compassionate appointment was turned down on the ground that the petitioner had not applied within the prescribed time limit.

2. Appearing for the petitioner, learned Advocate Shri Paritosh Calla has submitted that the respondents had erred in rejecting the case of the petitioner for compassionate appointment on the ground of delay. He has pointed out that the petitioner had made his first application within 3 weeks of the death of the Government servant and the authorities therefore were not right in rejecting the application on the ground of delay alone. Shri Calla has further submitted that the deceased Government servant was not married and he had therefore, not left behind his widow or any children. It is the case of the petitioner that the petitioner was residing with the deceased Government servant and was entirely dependent on him and his income for survival. It is therefore the contention of the learned Advocate for the petitioner that the petitioner is entitled to be considered for compassionate appointment as per the prevailing policy of the Government.

3. The learned Assistant Government Pleader Shri N.D. Gohil for respondent No.1 and learned Advocate Shri Pardiwala appearing for the respondents Nos. 2 and 3 have contended that the petitioner is not entitled to receive the compassionate appointment. It is submitted that though the second order dated 30th October, 2002 records the reason of delay for rejection of the application of the petitioner, the first rejection order dated 19th December, 2000 specifically states that the petitioner as a brother of the deceased is not entitled to receive compassionate appointment. The respondents have relied upon the Government Resolutions Nos. 1201-910(2) and 1201-910(3) both dated 7th September,

2002. In Resolution No. 1201-910(3), it is stated that term "dependent members of the family" will be defined as follows:-

Following will be considered to be the dependent members of the family of the deceased Government servant:-

(1) lawful wife or husband,
(2) son or unmarried daughter (including the legally adopted child, adopted according to the Hindu Adoption Act, 1956 of a Government servant who does not have children)

who at the time of the death of the employee was fully dependent on that Government servant.

In the Resolution No. 1201-910(2) dated 7th September, 2002, it is further provided that earlier the provisions did not permit grant of compassionate appointment to any other dependent members of the family of the deceased other than wife or husband of the Government servant. However, in the said Resolution it is provided that in case where the wife or the husband of the deceased Government servant is not willing to accept the compassionate appointment, then subject to fulfilment of all other conditions, it will be open to the Government to consider the claim of compassionate appointment of other dependent members of the family of the deceased.

4. Basing reliance on the said Resolutions, learned Advocate Shri Calla has contended that since the petitioner was dependent on the deceased Government servant and since there were no other family members of the deceased who could have claimed compassionate appointment, the petitioner's case should have been considered.

5. From the perusal of Resolution No. 1201-910(3), it is clear that the term "dependent members of the family" are defined by the Government in the said Resolution and it would only include the wife or the husband of the deceased Government servant and his or her son or unmarried daughter, including adopted children, adopted by the Government servant who has no children of his own and which adoption is otherwise in consonance with the provisions of the Hindu Adoption Act. The said definition does not include any other person than those

mentioned above and the words "... those who are completely dependent on the deceased at the time of his death" have to read in conjunction with the earlier portion wherein the term "dependent members of the family" are defined and described. The said words cannot be read in isolation so as to include any other member of the family of the deceased who does not fall within the description of the lawful wife or husband, son or unmarried daughter including adopted children as mentioned above. The intention of the policy maker is clear that even if there are members in the family of the deceased Government servant who fall within the description, claim of any one can be considered for compassionate appointment only if he or she was otherwise dependent on the deceased at the time of death and not otherwise. In view of this clear intention of the Government, the Resolution No. 1201-910(2) also has to be read in connection with the said policy. When read in continuation of the earlier policy of the Government, it becomes clear that in the Resolution No. 1201-910(2) also the intention is to consider for compassionate appointment other members of the family in case the husband or the wife of the deceased, as the case may be, is not willing to accept such an appointment. Here also however, the person can get benefit only if he or she falls in the category of the term "dependent member of the family" as specified by the Government in the above mentioned Resolution and not otherwise.

6. In the recent decision of the Hon'ble Supreme Court in the case of Punjab National Bank & ors. V. Ashwini Kumar Taneja, reported in 2004 AIR SCW 4602, the Hon'ble apex Court has considered various decisions on the point of compassionate appointment and it is observed that such a claim strictly cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. It is therefore, necessary for the authorities to frame Rules, Regulations or to issue such administrative orders which can stand the test of Articles 14 and 16 of the Constitution and the appointment on compassionate ground cannot be claimed as a matter of right.

7. The claim of the petitioner for being granted compassionate appointment has to be considered in four corners of the policy formulated by the Government for such a purpose.

8. In view of the discussion above, I find that the petitioner cannot be considered as a dependent member of the family of the deceased. The decision of the respondents therefore cannot be termed as illegal or unlawful and though the subsequent order indicates the reason of delay for rejection, which may not be entirely justified, I find no illegality in the respondents' rejecting the case of the petitioner for compassionate appointment, since the petitioner was not a dependent member of the family of the deceased for the purpose of seeking compassionate appointment.

9. The learned Advocate for the petitioner has submitted that on previous occasion one Shri Karandas G. Langa was given compassionate appointment on death of his brother who was a Government servant. In absence of any policy permitting such an appointment, the petitioner cannot base his claim on a previous incident without there being any authority of law in support of such a claim. By now it is well settled that under Articles 14 and 16 of the Constitution of India, the petitioner cannot claim any benefits out of the illegal actions of the Government and the petitioner has to independently establish his right under the law (see 1994 SC 845, 1996 2 SCC 459 and 2000 9 SCC 94).

10. In the result, I find no merit in the petition. The same fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas